FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

December 23, 2003

In Reply Refer To:
Maritimes & Northeast Pipeline, L.L.C.
Docket No. RP02-489-003

Maritimes & Northeast Pipeline, L.L.C.
1284 Soldiers Field Road
Boston, Massachusetts 02135

Attention: Patrick J. Hester
Senior Vice President and General Counsel

Reference: Original Sheet No. 249A, Original Sheet No. 249B
and Second Substitute Third Revised Sheet No. 250 to
FERC Gas Tariff, First Revised Volume No. 1

Dear Mr. Hester:

1. On February 19, 2003, Maritimes & Northeast Pipeline, L.L.C. (Maritimes) submitted the above referenced tariff sheets in compliance with the Commission order issued on February 6, 2003 (the February 6 Order).[1] The Commission accepts the referenced tariff sheets effective October 1, 2002, subject to conditions as detailed below. Maritimes is directed to file revised tariff sheets within 15 days of the date of this order.

Background

2. In the February 6 Order the Commission conditionally accepted certain tariff sheets, and required Maritimes to file revised tariff sheets clarifying that the partial day release quantity is calculated as the difference between the Maximum Daily Transportation Quantity (MDTQ) on the Releasing Customer's contract and the amount scheduled by the Releasing Customer, as determined using the standards promulgated by the North American Energy Standards Board (NAESB).

[1] 102 FERC ¶ 61,145 (2003).

Details of the Instant Filing

3. Maritimes notes that in the February 6 Order, the Commission rejected certain alternate tariff sheets, explaining that "[I]f either the releasing or replacement shipper flows more than their allocated MDQ during the gas day, they would be responsible for paying the overrun rate . . . for all gas above their MDQ and would also be subject to potential overrun, scheduling or imbalance penalties." Further, Maritimes notes that the Commission acknowledges it has authorized pipelines to charge twice the interruptible transportation rate for unauthorized overruns during non-critical periods and higher penalties for overruns during critical periods. Maritimes states that the Commission recognized in the February 6 Order that such overrun charges and penalties are designed to deter shippers from obtaining capacity free of charge in excess of contractual quantities. Maritimes contends by suggesting that the pipeline is "fully protected" if the shipper actually flows gas above its contract demand, the February 6 Order appears to contemplate that Maritimes' tariff already contains a mechanism by which releasing and replacement shippers that overrun the contractual MDTQ in a capacity release situation are charged for the extra transportation and penalized to the extent the overrun occurs during a critical period. Maritimes asserts that its tariff currently does not contain such a mechanism.

4. Maritimes states that to implement the partial day release quantity definition required by the Commission and consistent with the Commission's stated policy of protecting the pipeline from the unauthorized delivery of total quantities that exceed the MDTQ on the Releasing Customer's contract, Maritimes is proposing to incorporate into Section 9.2(c) of the GT&C overrun charges and penalties that are specifically applicable to the capacity release situation. Shippers who overrun the contractual MDTQ on the Releasing Customer's contract will be required to pay for the transportation costs associated with that overrun, as well as associated penalties for overruns in times of restricted capacity.

Public Notice, Interventions and Protests

5. Public notice of the filing was issued on February 21, 2003, with interventions and protests due on or before March 3, 2003. Pursuant to Rule 214 (18 C.F.R. § 385.214 (2003)), all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. Mobil Natural Gas, Inc. (Mobil) filed a protest, to which Maritimes filed an answer.[2] The details of Mobil's protest and Maritimes' answer are discussed below.

---

[2] Although answers to protests are not permitted by Rule 213(a)(2), 18 C.F.R. § 385.213(a)(2), the Commission finds good cause to waive the rule as Maritimes' answer may aid in the disposition of the issues raised by its filing

6. Mobil protests that Maritimes' proposal is procedurally flawed, that it violates Section 154.203(b) of the Commission's regulations, which states that "[f]ilings made to comply with Commission orders must include only those changes required to comply with the order." Mobil asserts that the February 6 Order did not require Maritimes to propose partial-day release penalties. Additionally, Mobil also asserts that even if the Commission finds that the instant filing does not violate Section 154.203(b), Maritimes nevertheless has not justified the need for the proposed new penalties.

7. Finally, Mobil asserts that if the Commission finds that the instant filing does not violate Section 154.203(b), and further finds that Maritimes has justified the need for the proposed new penalties, Maritimes' proposal to credit revenues to the FRQ Deferred Account is contrary to Commission policy, and should be rejected. Mobil asserts that Maritimes should be required to credit MDTQ Overrun Penalty revenues only to non-offending shippers, instead of crediting all such revenues to the Fuel Retainage Quantity (FRQ) Deferred Account.

8. With regard to Mobil's protest that the portions of the instant filing adding the MDTQ Overrun Charge and the MDTQ Overrun Penalty are outside the scope of a compliance filing and thus violate 18 C.F.R. § 154.203(b), Maritimes asserts that the instant filing is an appropriate compliance filing. Maritimes notes that the Commission has accepted additional provisions in a compliance filing when the provisions directly relate to the remainder of the compliance filing and are necessary or reasonable to comply with the underlying order, or to prevent subsidization by other customers and ensure full compensation to the utility. Maritimes states that should the Commission find that any portion of the instant filing is outside the scope of a compliance filing, Maritimes notes that the Commission in the past has waived 154.203(b) for good cause shown. Maritimes submits that good cause exists here because, if Maritimes is not permitted to implement an overrun charge and penalty in the context of its compliance filing, it will not have the ability to utilize the only method identified by the Commission in the February 6 Order for discouraging overruns in a partial day release transaction. Maritimes concludes that if the Commission denies Maritimes the right to implement the MDTQ overrun penalty in this proceeding, Maritimes will not be protected from the potential harm associated with shippers overrunning their respective MDTQs in capacity release situations.

9. With regard to Mobil's claims that Maritimes' penalty is inappropriate, Maritimes states that this claim is inconsistent with the February 6 Order. Maritimes contends that the February 6 Order noted that such a penalty would be necessary to deter wrongful behavior on the Maritimes system, involving partial day capacity releases, that could endanger reliable operations. With regard to Mobil's protest that Maritimes already has a penalty for overruns and that this should be sufficient, Maritimes asserts that this is inaccurate. Maritimes claims it does not have a penalty for daily overruns that would

apply in the partial day capacity release situation, and that is why Maritimes included the MDTQ Overrun Penalty as part of the instant filing.

10. With regard to Mobil's assertion that Maritimes should be required to credit MDTQ Overrun Penalty revenues only to non-offending shippers, instead of crediting all such revenues to the FRQ Deferred Account, Maritimes asserts it is not required to credit only non-offending shippers. Mobil states that this proposed crediting mechanism conflicts with Order No. 637 and is inconsistent with the crediting mechanism Maritimes has proposed for operational flow order (OFO) and curtailment penalty revenues in its Order No. 637 compliance proceeding. Maritimes asserts that Mobil's argument is flawed and should be summarily rejected. Maritimes contends that Order No. 637 did not, as Mobil claims, create an iron-clad policy that all penalty revenues be credited only to non-offending shippers. Maritimes maintains that in Order No. 637-A, the Commission stated that although the policy is for the pipeline to credit non-offending shippers, "the Commission is not requiring that the revenue be credited exclusively to non-offending shippers." Maritimes states that the only iron-clad policy regarding crediting of penalty revenues is found in Section 284.12(c)(2)(v) of the Commission's regulations, which states that pipelines "may not retain net penalty revenues, but must credit them to shippers." Maritimes notes that nowhere does the term "non-offending" appear in the regulation. Maritimes states that its proposal for crediting MDTQ Overrun Penalty revenues is also consistent with its existing tariff.

Discussion

11. The Commission finds that Maritimes' proposed tariff revision to provide that the partial day release quantity is calculated as the difference between the Maximum Daily Transportation Quantity (MDTQ) on the Releasing Customer's contract and the amount scheduled by the Releasing Customer prior to the effective time of the release of capacity, complies with the February 6 Order. However, Maritimes' proposal to implement MDTQ Overrun Charges and MDTQ Overrun Penalties is rejected as beyond the scope of compliance with the February 6 Order.

12. In the February 6 Order, the Commission found that Maritimes was incorrect in contending that it would be required to deliver more than the contract demand in the original contract for partial day releases. If either the releasing or replacement shipper flowed more than their allocated MDQ during the gas day, they would be responsible for paying the overrun rate (interruptible transportation rate) for all gas above their MDQ and would also be subject to potential overrun, scheduling or imbalance penalties. The Commission further noted that "[T]hese are the same provisions that apply to any shipper overrunning its contract demand (regardless of whether it is engaged in a release transaction), and Maritimes has offered no justification for treating releasing shippers differently in this respect than other shippers." Finally, the Commission found that the pipeline would be "fully protected" if a releasing or replacement shipper exceeded the

contractual demand, noting that "[T]he shipper exceeding its MDQ would be responsible for paying the added transportation costs plus any additional overrun, scheduling, or imbalance penalties that result from such action. For example, the Commission has authorized pipelines to charge twice the interruptible transportation rate for unauthorized overruns during non-critical periods and even higher penalties for overruns during critical periods."

13. In the February 6 Order, therefore, the Commission found that that the pipeline's existing provisions regarding contract overruns would protect it against contract overruns in the case of partial day releases, in the same way as these provisions protect the pipeline against contract overruns in all other situations. The Commission stated that the overrun charge for partial day releases should be the same as that applied in other contexts:

> If either the releasing or replacement shipper flows more than their allocated MDQ during the gas day, they would be responsible for paying the overrun rate (interruptible transportation rate) for all gas above their MDQ and would also be subject to potential overrun, scheduling or imbalance penalties. These are the same provisions that apply to any shipper overrunning its contract demand (regardless of whether it is engaged in a release transaction), and Maritimes has offered no justification for treating releasing shippers differently in this respect than other shippers.[3]

14. The February 6 Order required simply that Maritimes apply the generally applicable NAESB scheduling standards for all transactions to partial day releases.[4]

15. Maritimes' tariff, Section 3.2(B)(2) of its firm rate schedules, includes a charge for overrun quantities whenever a shipper exceeds 102% of its maximum daily contract quantity.[5] The Commission finds that this overrun charge mechanism should be applied to all contract overruns, regardless of whether they result from partial day releases or from other causes. Accordingly, Maritimes' proposal for new overrun charges or new penalties is unnecessary because Maritimes' tariff already includes a charge for contract overrun for partial day releases.

---

[3] 102 FERC ¶61,145, at P 25.

[4] The reference in the order to the ability of the pipeline to charge twice the interruptible transportation rate for unauthorized overruns during non-critical periods and even higher penalties for overruns during critical periods was simply an example of the type of contract overrun provisions the Commission has approved in Order No. 637 proceedings.

[5] See Tariff Sheet No. 103.

16. Mobil's contentions regarding crediting of penalty revenues also go beyond the scope of compliance with this order. These were issues to be considered in Maritimes' Order No. 637 proceeding, not a proceeding limited to compliance with the partial day release requirements. This protest is therefore denied.

17. Consistent with the discussion above, Maritimes is directed to refile the referenced tariff sheets, removing its proposal to add MDTQ Overrun Charge and the MDTQ Overrun Penalty. The referenced tariff sheets are accepted, effective October 1, 2002, subject to this condition. Maritimes is directed to file revised tariff sheets within 15 days of the date of this order.

By direction of the Commission.

Linda Mitry,
Acting Secretary.

cc: Joseph F. McHugh, Director
Rates and Regulatory Affairs
M&N Management Company
1284 Soldiers Field Road
Boston, Massachusetts 02135

James D. Seegers
Vinson & Elkins, L.L.P.
2300 First City Tower
1001 Fannin Street
Houston, Texas 77002

M&N Management Company
401 Ninth Street, N.W.
Suite 1100
Washington, DC 20004